

## § 1485.12

*Participant*—a entity which has entered into an agreement with CCC.

*Promoted commodity*—an agricultural commodity whose sale is the intended result of a promotion activity.

*Sales team*—a group of individuals engaged in an approved activity intended to result in specific sales.

*Small-sized entity*—a U.S. commercial entity which meets the small business size standards published at 13 CFR part 121, Small Business Size Regulations.

*SRTG*—an association of State Departments of Agriculture referred to as State Regional Trade Group(s).

*STRE*—sales and trade relations expenditures.

*Supergrade*—a salary level designation that is applicable to certain non-U.S. employees who direct participants' overseas offices.

*Trade team*—a group of individuals engaged in an approved activity intended to promote the interests of an entire agricultural sector rather than to result in specific sales by any of its members.

*Unfair trade practice*—an act, policy, or practice of a foreign government that:

(1) Violates, is inconsistent with, or otherwise denies benefits to the United States under, any trade agreement to which the United States is a party; or

(2) Is unjustifiable, unreasonable, or discriminatory and burdens or restricts United States commerce.

*U.S. commercial entity*—an agricultural cooperative, producer association authorized by 7 U.S.C. 291, or for-profit firm located and doing business in the United States, and engaged in the export or sale of an agricultural commodity.

*U.S. industry contribution*—the expenditure made by the U.S. industry in support of an approved activity.

*USDA*—the United States Department of Agriculture.

[60 FR 6363, Feb. 1, 1995, as amended at 61 FR 32644, June 25, 1996; 61 FR 58780, Nov. 19, 1996; 63 FR 29940, June 2, 1998; 63 FR 32041, June 11, 1998]

## § 1485.12 Participation eligibility.

(a) To participate in the MAP, an entity:

(1) Shall be:

## 7 CFR Ch. XIV (1–1–06 Edition)

(i) A nonprofit U.S. agricultural trade organization;

(ii) A nonprofit state regional trade group;

(iii) A U.S. agricultural cooperative; or

(iv) A State agency; and

(2) Shall contribute:

(i) In the case of generic promotion, at least 10 percent of the value of resources provided by CCC for such generic promotion; or

(ii) In the case of brand promotion, at least 50 percent of the total cost of such brand promotions.

(b) To participate in the EIP/MAP, an entity:

(1) Shall be a U.S. commercial entity that either owns the brand(s) of the agricultural commodity to be promoted or has the exclusive rights to use such brand(s);

(2) Shall contribute at least 50 percent of the total cost of the brand promotion; and

(3) That is a for-profit firm, other than a cooperative or producer association authorized by 7 U.S.C. 291, shall be a small sized entity.

(c) CCC may require a contribution level greater than that specified in paragraphs (a) and (b) of this section. In requiring a higher contribution level, CCC will take into account such factors as past participant contributions, previous MAP funding levels, the length of time an entity participates in the program and the entity's ability to increase its contribution.

(d) CCC may require an EIP/MAP applicant to participate through an MAP participant.

(e) CCC will enter into MAP or EIP/MAP agreements only where the eligible agricultural commodity is comprised of at least 50 percent U.S. origin content by weight, exclusive of added water.

(f) CCC will not enter into an MAP or EIP/MAP agreement for the promotion of tobacco or tobacco products.

[60 FR 6363, Feb. 1, 1995, as amended at 61 FR 58780, Nov. 19, 1996]

## § 1485.13 Application process and strategic plan.

(a) *General application requirements.* CCC will periodically publish a Notice

## Commodity Credit Corporation, USDA

## § 1485.13

in the FEDERAL REGISTER that it is accepting applications for participation in MAP and EIP/MAP. Applications shall be submitted in accordance with the terms and requirements specified in the Notice. An application shall contain basic information about the applicant and the proposed program, a program justification and a strategic plan.

(1) *Basic applicant and program information.* (i) All MAP and EIP/MAP applications shall contain:

(A) The name and address of the applicant;

(B) The name of the Chief Executive Officer;

(C) The name and telephone number of the applicant's primary contact person;

(D) The name(s) of the person(s) responsible for managing the program;

(E) Type of organization—see § 1485.12(a)(1);

(F) Tax exempt identification number, if applicable;

(G) Activity plan year (mm/dd/yy-mm/dd/yy);

(H) Dollar amount of CCC resources requested for generic activities;

(I) Dollar amount of CCC resources requested for brand activities;

(J) Percentage of CCC resources requested for brand activities that will be made available to small-sized entities;

(K) Total dollar amount of CCC resources requested;

(L) Percentage of CCC resources requested for general administrative costs and overhead; and

(M) Estimated cumulative carry-over—i.e., the estimated amount of unexpended funds allocated to the applicant in any prior year;

(ii) Applications submitted by non-profit entities shall also contain:

(A) A description of the organization;

(B) A description of the organization's membership and membership criteria;

(C) A list of affiliated organizations;

(D) A description of management and administrative capability;

(E) A description of prior export promotion experience;

(F) Value, in dollars, that the applicant will contribute;

(G) Applicant's contribution stated as a percent of 1(i)(K) above;

(H) Value, in dollar, of contributions from other sources;

(2) *Program justification.* (i) All MAP and EIP/MAP applications shall contain:

(A) A description of the eligible agricultural commodity(s), its harmonized system code, the commodity aggregate code and the percentage of U.S. origin content by weight, exclusive of added water;

(B) A description of the exported agricultural commodity(s), its harmonized system code, the commodity aggregate code and the percentage of U.S. origin content by weight, exclusive of added water;

(C) A description of the promoted agricultural commodity(s), its harmonized system code, the commodity aggregate code and the percentage of U.S. origin content by weight, exclusive of added water;

(D) A description of the anticipated supply and demand situation for the exported agricultural commodity(s);

(E) The volume and value of the exported agricultural commodity(s) for the most recent 3-year period;

(F) If the proposal is for two or more years, an explanation why the proposal should be funded on a multiyear basis; and

(G) A certification and, if requested by the Deputy Administrator, a written explanation supporting the certification, that any funds received will supplement, but not supplant, any private or third party funds or other contributions to program activities. The justification shall indicate why the participant is unlikely to carry out the activities without Federal financial assistance. In determining whether federal funds received supplemented or supplanted private or third party funds or contributions, CCC will consider the participant's overall marketing budget from year to year, variations in promotional strategies within a country and new markets.

(ii) Applications submitted by a small-sized entity seeking funds under an EIP/MAP agreement shall contain a certification that it is a small business within the standards established by 13 CFR part 121. For purposes of determining size, a cooperative will be considered a single entity.

(iii) Applicants seeking funds for brand promotion shall contain the information required by § 1485.16(g)(1) and (2) in order to justify a rate of reimbursement higher than specified therein.

(3) *Strategic plan.* (i) All MAP and EIP/MAP applications shall contain:

(A) A summary of proposed budgets by country and commodity aggregate code;

(B) A description of the world market situation for the exported agricultural commodity;

(C) A description of competition from other exporters, including U.S. firms, where applicable;

(D) A statement of goals and the applicant's plans for monitoring and evaluating performance towards achieving these goals.

(E) For each country, if applicable, five years of:

(1) historical U.S. export data;

(2) U.S. market share; and

(3) MAP funds received;

(F) For each country, three years of projected U.S. export data and U.S. market share;

(G) Country strategy, including constraint(s) impeding U.S. exports, strategy to overcome constraints, previous activities in the country, the projected impact of the proposed program on U.S. exports;

(H) A justification for any new overseas office;

(I) A description of any demonstration projects, if applicable (see § 1485.13(d)(1) through (4));

(J) Data summarizing historical and projected exports, market share and MAP budgets for the world; and

(K) A description of overall program goals for the ensuing 3-5 years;

(ii) MAP applications for brand promotion assistance shall also contain:

(A) A description of how the brand promotion program will be publicized to U.S. and foreign commercial entities;

(B) The criteria that will be used to allocate funds to U.S. and foreign commercial entities; and

(C) A justification for conducting a brand promotion program with foreign commercial entities, if applicable.

(b) CCC may request any additional information which it deems necessary

to evaluate an MAP or EIP/MAP application. In particular, CCC may require additional performance measurement, as required by the Government Performance and Results Act of 1993.

(c) *Eligible contributions.* (1) In calculating the amount of contributions that it will make, and the contributions it will receive from a U.S. industry, a foreign third party or a State agency, the MAP applicant may include the costs (or such prorated costs) listed under paragraph (c)(2) of this section if:

(i) Expenditures will be made in furtherance of an approved activity, and

(ii) The contributor has not been or will not be reimbursed by any other source for such costs.

(2) Subject to paragraph (c)(1) of this section, eligible contributions are:

(i) Cash;

(ii) Compensation paid to personnel;

(iii) The cost of acquiring materials, supplies or services;

(iv) The cost of office space;

(v) A reasonable and justifiable proportion of general administrative costs and overhead;

(vi) Payments for indemnity and fidelity bond expenses;

(vii) The cost of business cards;

(viii) The cost of seasonal greeting cards;

(ix) Fees for office parking;

(x) The cost of subscriptions to publications;

(xi) The cost of activities conducted overseas;

(xii) Credit card fees;

(xiii) The cost of any independent evaluation or audit that is not required by CCC to ensure compliance with program requirements;

(xiv) The cost of giveaways, awards, prizes and gifts;

(xv) The cost of product samples;

(xvi) Fees for participating in U.S. government activities;

(xvii) The cost of air and local travel in the United States;

(xviii) Payment of employee's or contractor's share of personal taxes; and

(xix) The cost associated with trade shows, seminars, entertainment and STRE conducted in the United States.

(3) The following are not eligible contributions:

## Commodity Credit Corporation, USDA

## § 1485.14

(i) Any portion of salary or compensation of an individual who is the target of an approved promotional activity;

(ii) Any expenditure, including that portion of salary and time spent in promoting membership in the participant organization or in promoting the MAP among its members (sometimes referred to in the industry as "backsell");

(iii) Any land costs other than allowable costs for office space;

(iv) Depreciation;

(v) The cost of refreshments and related equipment provided to office staff;

(vi) The cost of insuring articles owned by private individuals;

(vii) The cost of any arrangement which has the effect of reducing the selling price of an agricultural commodity;

(viii) The cost of product development, product modifications, or product research;

(ix) Slotting fees or similar sales expenditures;

(x) Membership fees in clubs and social organizations; and

(xi) Any expenditure for an activity prior to CCC's approval of that activity or amendment.

(4) The Deputy Administrator shall determine, at the Deputy Administrator's discretion, whether any cost not expressly listed in this section may be included by the participant as an eligible contribution.

(d) *Special rules governing demonstration projects funded with CCC resources.* CCC will consider proposals for demonstration projects provided:

(1) No more than one such demonstration project per constraint is undertaken within a market;

(2) The constraint to be addressed in the market is a lack of technical knowledge or expertise;

(3) The demonstration project is a practical and cost effective method of overcoming the constraint;

(4) A third party participates in such project through a written agreement which provides that title to the structure, facility or equipment may transfer to the third party and that the MAP participant may use the structure, facility or equipment for a period

specified in the agreement for the purpose of removing the constraint.

[60 FR 6363, Feb. 1, 1995, as amended at 61 FR 32644, June 25, 1996; 63 FR 29940, June 2, 1998]

### § 1485.14 Application approval and formation of agreements.

(a) *General.* CCC will, consistent with available resources, approve those applications which it considers to present the best opportunity for developing, maintaining or expanding export markets for U.S. agricultural commodities. The selection process, by its nature, involves the exercise of judgment. CCC's choice of participants and proposed promotion projects requires that it consider and weigh a number of factors that cannot be mathematically measured—i.e., market opportunity, market strategy and management capability.

(b) *Approval criteria.* In assessing the applications it receives and determining which it will approve, CCC considers the following criteria:

(1) The effectiveness of program management;

(2) Soundness of accounting procedures;

(3) The nature of the applicant organization, with greater weight given to those organizations with the broadest base of producer representation;

(4) Prior export promotion or direct export experience;

(5) Previous MAP funding;

(6) Adequacy of the applicant's strategic plan in the following categories:

(i) Description of market conditions;

(ii) Description of, and plan for addressing, market constraints;

(iii) Reasonable likelihood of plan success;

(iv) Export volume and value and market share goals in each country;

(v) Description of evaluation plan and suitability of the plan for performance measurement; and

(vi) Past program results and evaluations, if applicable.

(c) *Allocation factors.* After determining which applications to approve, CCC determines how it will allocate resources among participants based on the following factors, in addition to those in paragraph (b) of this section:

(1) Size of the budget request in relation to projected value of exports;